

House File 2165 - Enrolled

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HOUSE FILE 2165

AN ACT

RELATING TO BUSINESS CORPORATIONS, BY PROVIDING FOR
DISTRIBUTIONS AND BUSINESS OPPORTUNITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 490.640, subsection 7, Code 2007, is
amended to read as follows:

7. Indebtedness of a corporation, including indebtedness
issued as a distribution, is not considered a liability for
purposes of determinations under subsection 1 if its terms
provide that payment of principal and interest are made only
if and to the extent that payment of a distribution to
shareholders could then be made under this section. If the
indebtedness is issued as a distribution, each payment of
principal or interest is treated as a distribution, the effect
of which is measured on the date the payment is actually made.

8. This section shall not apply to distributions in
liquidation under division XIV.

Sec. 2. Section 490.831, subsection 1, paragraph a, Code
2007, is amended to read as follows:

a. That any of the following apply:

(1) A provision in the articles of incorporation
authorized by section 490.202, subsection 2, paragraph "d", or
the protection afforded by section 490.832 if interposed as a
bar to the proceeding by the director, does not preclude
liability.

(2) The protection afforded by section 490.870 precludes
liability.

Sec. 3. NEW SECTION. 490.870 BUSINESS OPPORTUNITIES.

1. A director's taking advantage, directly or indirectly,
of a business opportunity may not be the subject of equitable
relief, or give rise to an award of damages or other sanctions
against the director, in a proceeding by or in the right of
the corporation on the ground that such opportunity should
have first been offered to the corporation, if before becoming
legally obligated respecting the opportunity the director
brings it to the attention of the corporation and any of the
following apply:

a. Action by qualified directors disclaiming the
corporation's interest in the opportunity is taken in
compliance with the procedures set forth in section 490.832,
as if the decision being made concerned a director's
conflicting interest transaction.

b. Shareholders' action disclaiming the corporation's
interest in the opportunity is taken in compliance with the
procedure set forth in section 490.832, as if the decision
being made concerned a director's conflicting interest
transaction; except that, rather than making the disclosure as
required in section 490.832, in each case the director shall
have made prior disclosure to those acting on behalf of the
corporation of all material facts concerning the business
opportunity that are then known to the director.

2. In any proceeding seeking equitable relief or other
remedy based upon an alleged improper taking advantage of a
business opportunity by a director, the fact that the director
did not employ the procedure described in subsection 1 before
taking advantage of the opportunity shall not create an
inference that the opportunity should have been first
presented to the corporation or alter the burden of proof
otherwise applicable to establish that the director breached a
duty to the corporation in the circumstances.

PATRICK J. MURPHY
Speaker of the House

JOHN P. KIBBIE

President of the Senate

I hereby certify that this bill originated in the House and
is known as House File 2165, Eighty-second General Assembly.

MARK BRANDSGARD
Chief Clerk of the House

Approved _____, 2008

CHESTER J. CULVER
Governor